

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

PAUL BOWARY, M.D.

Plaintiff,

VS.

UNITED STATES MEDICAL LICENSING
EXAMINATION, NATIONAL BOARD OF
MEDICAL EXAMINERS, and THE
FEDERATION OF STATE MEDICAL
BOARDS OF THE UNITED STATES, INC.

Defendants.

Civil Action No.:
1:21-CV-00278-JJM-LDA

PRELIMINARY INJUNCTION

On August 30, 2021, this matter was heard on Plaintiff Paul Bowary, M.D.’s, Motion for Preliminary Injunction. After briefing and oral argument by the parties, it is hereby ordered that Plaintiff’s Motion for Preliminary Injunction is granted in part and denied in part, and the Defendants are enjoined as described below.

The February 12, 2021 decision of the United States Medical Licensure Examination (“USMLE”) Composite Committee, set forth in a February 12, 2021 letter to the Plaintiff, denying Plaintiff’s appeal of the decision of the USMLE’s Committee for Individualized Review’s (“CIR”), set forth in a September 23, 2020 letter to the Plaintiff (the “CIR Decision”), is vacated. The CIR Decision is also vacated, and the Defendants are required to conduct a new CIR proceeding in which Plaintiff is provided with all the procedures set forth in the *United States Medical Licensing Examination (USMLE) Policies and Procedures Regarding Irregular Behavior* (April 2018), including but not limited to a hearing before the CIR and the right to pursue an appeal to the Composite Committee from any decision of the CIR. In accordance with those procedures, and subject to any standard page limitations and applicable submission deadlines, Plaintiff may submit whatever material or information he would like to submit in

support of his position, to be reviewed by the CIR along with any material or information provided by the Defendants' staff. (Transcript of 8/30/21 Hearing, at p. 35, l. 19 through p. 36, l. 8, p. 44, l. 4-8, and p. 9, l. 20 through p. 10, l. 7.)

Plaintiff's hearing before the CIR shall be included among the cases that are heard by the CIR at its next meeting, which is scheduled for December 13 and 14, 2021. A staff member in the Office of the USMLE Office of the Secretariat shall orally communicate the CIR's decision to Plaintiff by 5:00 p.m. on December 17, 2021, with a written letter to follow no later than December 31, 2021. Any material that Defendants' staff intends to submit to the CIR for its review shall be provided to Plaintiff by November 15, 2021. Any written material that Plaintiff wants to submit for the CIR's review shall be submitted by November 29, 2021. In all other respects, Plaintiff's motion for a preliminary injunction is denied. (Transcript of 8/30/21 Hearing at p. 36, l. 18-19.)

The Court finds that Plaintiff has demonstrated a likelihood of success on the merits of his claim that Defendants breached their contract with Plaintiff by failing to include material information in their April 27, 2020 letter to Plaintiff regarding the analysis done by NBME staff of the email message and attached score report that Plaintiff asserts that he received from NBME. (Transcript of 8/30/21 Hearing, at p. 36, l. 9-13, and p. 43, l. 24 through p. 44, l. 3.)

The Court further finds that Plaintiff will suffer irreparable harm unless this Preliminary Injunction is issued, because of his continued lack of a medical license and his potential deportation. (Transcript of 8/30/21 Hearing, at p. 36, l. 13-16.) Finally, the Court finds that the equities balance in favor of affording Plaintiff proper procedure as provided in the *USMLE Policies and Procedures Regarding Irregular Behavior*. (Transcript of 8/30/21 Hearing, at p. 36, l. 16-17.)

In addition, although the Court cannot order federal agencies that are not before the Court to refrain from deporting Plaintiff, it is the Court's intent that Plaintiff should be allowed to remain in the United States during the pendency of the above captioned matter, so that he may work and assist in the presentation of his case, and, if applicable, during the pendency of proceedings pertaining to the medical license issued to Plaintiff by the Rhode Island Department of Health. (Transcript of 8/30/21 Hearing, at p. 37, l. 4 through p. 38, l. 18.)

In light of the above ruling, this action is hereby stayed in all respects pending further order of the Court. (Transcript p. 41, l. 11-21, p. 42, l. 10-15.)

This Order is without prejudice to Plaintiff seeking further relief with respect to the date of the CIR proceedings, and without prejudice to the Defendants' right to oppose any such relief, should Plaintiff's immigration status change before the scheduled date of the CIR proceedings.

SO ORDERED this _____ day of _____, 2021

Chief Judge John J. McConnell, Jr.